THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.12253 OF 2005

DATED: 23-02-2007

Between:

The Depot Manager, APSRTC, Hanamkonda Depot, Warangal District.

.. Petitioner

and

G.V. Rao died per LRs G.Varalaxmi and others

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.12253 OF 2005

ORDER:

This writ petition is filed seeking a certiorari to call for the records relating to the award in I.D.No.139 of 2001 dated 30.09.2004 on the file of the Industrial Tribunal-cum-Labour Court at Warangal, and quash the same as arbitrary and illegal.

It appears, the husband of the 2nd respondent and father of the respondents 3 to 5 was removed from service on 30.11.1991, on the charge of unauthorized absence. Thereafter, the husband of the 1st respondent died in the year 1996. More than five years thereafter, respondents 2 to 5 raised a dispute in I.D.No.139 of 2001 under Section 2-A (2) of the Industrial Disputes Act (for short 'the Act'), seeking to set aside the removal order dated 30.11.1991. The Labour Court, after a detailed consideration of the matter, came to the conclusion that the punishment of removal from service imposed on the workman-husband of the 2nd respondent, by the petitioner-management, is shockingly disproportionate to that of the misconduct proved against him. Accordingly, the Labour Court passed an award directing the petitioner-management to pay 25% of backwages from 30.11.1991 till the date of death of workman i.e. 27.06.1996, to his legal heirs i.e. the respondents 2 to 5 herein, as compensation. Aggrieved by the same, the petitioner-management filed this writ petition.

Heard both sides.

The only contention of the learned counsel for the petitioner-

management is that there was a delay of about ten years in raising the dispute, and hence the Labour Court ought not to have entertained the same and could not have passed such an order directing the petitioner-management to pay 25% of the backwages for the period from 30.11.1991 to 27.06.1996.

In reply, the learned counsel for the respondents 2 to 5 contended that the workman suffered from Jaundice, which became terminal, and he ultimately died on 27.06.1996. In fact, he could not even attend the enquiry and asked the Enquiry Officer to conduct the enquiry on the basis of the record. The Enquiry Officer found that the workman absented for 142 days after expiry of leave applied by him. Hence, for such a misconduct of absenteeism due to illness, the services of the workman could not have been dispensed with and the said action of the management was found to be unreasonable, and the Labour Court has rightly passed an order awarding only 25% of the backwages, in view of the delay caused by the respondents 2 to 5 in approaching the Labour Court.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side, and perused the impugned award and other material made available on record.

The Labour Court has noticed that the workman gave a letter asking the Enquiry Officer to conduct enquiry in his absence and he has no objection for the same, due to his personal reasons. In view of the request of the workman, the Enquiry Officer conducted enquiry and such enquiry cannot be found fault with. But, at the same time it is established that the workman was unauthorisedly absent for about 142 days and he applied leave for the remaining days. Further, while examining the intention and reasons for such absence, the Labour Court found that the workman was seriously ill due to Jaundice and he ultimately died in the year 1996.

In the counter filed by the petitioner-management before the Labour Court, there is not even a whisper about the misconduct, if any, to the credit

of the workman prior to the present disciplinary proceedings. Under these circumstances, the Labour Court has rightly found that the punishment of removal from service, imposed on the workman, is shockingly disproportionate to that of the misconduct established against him. However, while holding that the removal of workman is bad in law and he is entitled for reinstatement, in view of the death of the workman and also in view of the delay in raising the dispute, the Labour Court had only granted 25% of the backwages to the legal heirs of the workman, as stated earlier. I am of the opinion that the Labour Court has not committed any error in passing such an award, in the facts and circumstances of the case. The award passed by the Labour Court cannot be said to be either arbitrary or illegal and, hence, no interference can be made by this Court under Article 226 of the Constitution of India. The writ petition is devoid of merits and is liable to be dismissed.

The writ petition is accordingly dismissed. The petitioner-management is directed to settle all the benefits that were accrued to the workman while he was in service, within a period of three months from the date of receipt of a copy of this order. No costs.

C.V. RAMULU, J

23rd February, 2007.

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